IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9370 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TINU ATABHAI WAGHRI, @ DINESH SOMABHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UR BHATT, AGP for respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

1. The petitioner herein has challenged by way this petition under Article 226 of the Constitution his detention order passed by the Police Commissioner, Rajkot City on 14th June, 2000 in exercise of powers conferred

upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 15th June, 2000 in pursuance of the above order.

2. Grounds of detention indicates that in all three crimes before Rajkot Taluka Police Station and Bhaktinagar Police Station were registered against the petitioner on 3rd April, 2000, 5th June 2000 and 10th June, 2000 respectively under Sections 457 and 380 of the IPC. From the above said crimes registered and from the investigation papers, detaining authority came to the conclusion that the petitioner was indulged in theft of articles and house breaking offences. The detaining authority also came to the conclusion that the petitioner was hardened criminal and headstrong person. The detaining authority also considered the statements of two witnesses who on assurance of anonymity narrated the incidents on 22nd of May and 20th of April, 2000 against the petitioner, in which the concerned witness was harassed and beaten by the petitioner. From the above material, the detaining authority reached to the satisfaction that the petitioner was a "dangerous person" within the meaning of Sec. 29(c)) of the PASA Act. The detaining authority therefore as a last resort, passed the order of detention against the petitioner.

3. Learned Advocate Mr.H.R.Prajapati for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Various grounds raised to challenge the detention order, inter alia, it has been vehemently urged that the order in question is vitiated by non-application of mind on the part of detaining authority not only qua facts of the case but qua legal position as well.

5. From the rival contentions and scrutinising the record of the case, it clearly emerges from the grounds of detention that it is an admitted fact that in all the three crimes registered against the petitioner, he was in judicial custody. The factual aspect is the first crime was registered against the petitioner on 3rd April, 2000 and therefore the petitioner was in judicial custody since April 2000 and as per the statement of learned advocate for the petitioner, he is still in custody in the above said three crimes registered against the petitioner. The order of detention was passed on 14th of June, 2000, meaning thereby that immediately preceding two months of passing of the order, the petitioner was in

judicial custody. Having regard to this factual aspect continuing the illegal activities by the petitioner was out of question and this fact has not been considered by the detaining authority. The purpose of PASA Act is to put a citizen behind the bar to prevent him from, indulging in anti social and illegal activities in the society, for a temporary period, but in this case from April 2000 the petitioner was in judicial custody and was not capable of continuing his illegal activities. Non consideration of this aspect by the detaining authority is non-application of mind qua fact of the case, vitiating the detention order. Further, the detaining authority anticipated that even after releasing the petitioner on bail, the petitioner was likely to continue his illegal activities. In coming to this conclusion also, the detaining authority did not apply mind towards the fact that on the same grounds, i.e. the petitioner was indulging in illegal activities, the bail could have been opposed and even after releasing the petitioner on bail, the bail could have been cancelled under Section 437(5) of the Cr.P.C. The order of detention is vitiated on this ground alone for non-application of mind by the detaining authority. In his view of the matter, the order of detention is not sustainable in law.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Rajkot City on 14th June, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Tinu Atabhai Waghri @ Dinesh Somabhai Koli is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

7. Office is directed to send the writ to the Jail Authority fortwith.

(J.R. Vora, J.)

p.n.nair